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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Access Charge Reform

Price Cap Performance Review for Local  
Exchange Carriers

Transport Rate Structure and Pricing

CC Docket No. 96-262

CC Docket No. 94-1

CC Docket No. 91-213

**OPPOSITION TO AND COMMENTS ON  
PETITIONS FOR RECONSIDERATION**

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## TABLE OF CONTENTS

SUMMARY .....	iii
I. THE FCC CORRECTLY DETERMINED THAT THE TRANSPORT RATE STRUCTURE MUST BE REFORMED TO ENSURE COST-BASED PRICING.....	2
A. The Holding in <i>CompTel v. FCC</i> And Sections 201(b) And 202(a) Of The Act Compel The FCC To Eliminate The Unitary Rate Structure And Replace It With The Three-Part Rate Structure. ....	2
B. The FCC Should Reaffirm Its Reallocation Of Tandem-Switch Related Costs From The TIC To The Tandem-Switching Rate Elements. ....	7
C. The FCC Should Allow ILECs Flexibility In Establishing Multiplexer Rate Elements. ....	10
D. The Commission Should Deny The Request to Waive Non-Recurring Charges Associated With Establishing POPs At Or Near Tandems. ....	10
E. Granting Access Customers A Fresh Look To Select Competitive Transport Offerings Is Unlawful And Unnecessary To Protect Competition. ....	11
F. The Commission Should Eliminate The Exemption Precluding ILECs From Assessing Any Per-Minute Residual TIC Charges On CAPs. ....	12
II. SECTION 254(e) OF THE COMMUNICATIONS ACT REQUIRES THAT THE FCC MODIFY ITS RULES ON THE TREATMENT OF UNIVERSAL SERVICE CONTRIBUTIONS AND RECEIPTS IN THE COMPUTATION OF ACCESS CHARGES. ....	13
A. The FCC Should Reinstate 47 C.F.R. § 36.601(c).....	13
B. To Prevent Underrecovery Of Costs, The FCC Should Not Apply the X-Factor To Universal Service Contributions. ....	15
C. The FCC Should Reject AT&T's Proposal That USF Contributions Not Be Recovered Through Common Line Recovery Mechanisms. ....	16

III.	ELIMINATION OF THE PICC OR CLARIFICATION OF ITS APPLICATION TO CENTREX LINES IS NECESSARY, AND THE FCC SHOULD REJECT ARGUMENTS THAT THE MULTI-LINE PICC SHOULD BE REDUCED TO THE PRIMARY RESIDENTIAL PICC LEVEL.....	17
A.	To Maximize Efficient Provision And Affordability Of Universal Service, The FCC Should Eliminate The PICC And Increase Either The SLC Or Universal Service Support. ....	17
B.	If PICCs Are Retained, They Should Be Applied To Centrex Lines On A Trunk-Equivalency Basis. ....	19
IV.	THE FCC'S HOLDING THAT ACCESS CHARGES DO NOT APPLY TO USERS OF UNBUNDLED NETWORK ELEMENTS VIOLATES THE COMMUNICATIONS ACT. ....	20
A.	Failure To Permit Assessment Of Access Charges On Interstate Services Provided Through Unbundled Network Elements Violates Sections 254(d) And Section 202(a). ....	20
B.	Failure To Permit Assessment Of Access Charges On Interstate Services Provided Through Unbundled Network Elements Is Anti-competitive.....	23
V.	EXTENDING THE DEADLINE FOR IMPOSING CALL SET-UP CHARGES IS UNWARRANTED.....	24
VI.	CONCLUSION.....	25

## Summary

The petitions for reconsideration of the *Access Reform Order* fall into two camps. Several IXCs urge the Commission to reinstate the unitary rate structure, preserve the existing TIC, waive various charges and otherwise reverse the *Order's* initial and tentative steps toward a rational rate structure. These requests only serve to continue implicit subsidies in direct violation of the Communications Act ("Act") and to hinder competition in the access market. In contrast, USTA and several smaller independent LECs advocate clarifications and modifications of the *Order* that are essential to promoting fair competition and preserving sufficient universal service support. GTE's positions regarding the specific requests for reconsideration are summarized below and fully detailed in the remainder of its Opposition and Comments.

Transport rate structure. The Commission should reject pleas to restore the unitary switched transport rate structure, keep tandem-switching costs in the TIC, and impose multiplexer costs on users of direct-trunked transport. The unitary rate structure was established as a transitional mechanism to minimize rate shock for smaller IXCs. It does not reflect the way tandem-switched transport costs are incurred and impairs rational competition in the interexchange and access markets. Likewise, reallocation of certain costs from the TIC to tandem switching and other rate elements is necessary to promote true competition; retaining those costs in the TIC merely subsidizes individual competitors. Further, in keeping with a more permissive rather than prescriptive approach, the FCC should allow ILECs the flexibility to establish multiplexer rate elements according to market pressures and business plans instead of mandating a specific multiplexer charge.

The Commission also should deny requests to exempt transport customers from various charges and to permit customers to terminate existing term agreements. ILECs should not be forced to subsidize the costs of accommodating changes in POP locations by tandem-switched transport customers, who have known for years that the unitary rate structure was an impermanent feature of the access charge landscape. Nor should access customers get an additional "fresh look" period. They already had one such period in connection with implementation of the Commission's expanded interconnection policies, and there is no legal or policy basis for upsetting voluntary agreements reached in an increasingly competitive marketplace. The Commission should also eliminate the exemption releasing CAPs from the obligation of paying the per-minute residual TIC when they interconnect with an ILEC's end office. This exemption diminishes a significant source of funding to assist smaller carriers which will remain in place until the TIC is fully eliminated and is inconsistent with competitive neutrality. The CAP exemption should therefore be removed, not expedited as urged by AT&T.

Application of universal service contributions. The Commission's requirement that support from the federal universal service fund ("USF") be applied to the interstate access revenue requirement, when combined with elimination of the universal service expense adjustment allowed under 47 C.F.R. § 36.601(c), violates the mandate that universal service support be "sufficient". As explained fully in GTE's Opposition to petitions for reconsideration of the *Universal Service Order*, the FCC must reinstate that rule section in order to assure sufficient support.

Elimination or modification of PICCs. The new PICCs are nothing more than old subsidies in new clothing. They violate the requirement that universal service support be explicit, and should be replaced with either end user charges or revenues from the USF. If they are not eliminated, the Commission must clarify that the multi-line PICC applies to Centrex lines on a trunk-equivalency basis in order to avoid creating an arbitrary competitive imbalance between Centrex and PBX systems.

Imposition of access charges on UNEs. The prohibition on imposing access charges on entities that use UNEs to originate and terminate interstate interexchange calls violates Section 254 because it exempts one class of carriers from paying the universal service subsidies recovered through the TIC and CCL. The prohibition likewise violates Section 202 because it unreasonably discriminates between purchasers of UNEs and resellers. Finally, exempting CLECs from paying access charges on UNEs places ILECs at an unwarranted competitive disadvantage.

Call set-up charges. The Commission should not grant requests to eliminate or delay the implementation of optional call set-up charges. Currently, users with average or long hold times subsidize users with short hold times because non-traffic sensitive call set-up costs are recovered on a per-minute basis. Call set-up charges, in contrast, recover associated costs in a rational manner and therefore send correct economic signals. The Commission correctly established call set-up and duration pricing on a permissive basis and should apply this same type of pricing flexibility to other aspects of the new access charge regime in order to promote efficient pricing and rational competitive entry.

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Access Charge Reform

CC Docket No. 96-262

Price Cap Performance Review for Local  
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Transport Rate Structure and Pricing

CC Docket No. 91-213

**OPPOSITION TO AND COMMENTS OF GTE**

GTE Service Corporation and its affiliated domestic local exchange and interexchange telephone companies<sup>1</sup> (collectively "GTE") respectfully submit their opposition to, and comments on, certain petitions for reconsideration of the Commission's First Report and Order in the above-captioned proceeding.<sup>2</sup> As discussed herein, the Commission should reject requests to reverse its initial steps toward a more rational access charge structure and instead grant the petitions seeking modifications necessary to promote fair access competition and preserve sufficient universal service support.

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<sup>1</sup> These companies include: GTE Alaska, Incorporated; GTE Arkansas Incorporated; GTE California Incorporated; GTE Florida Incorporated; GTE Hawaiian Telephone Company Incorporated; The Micronesian Telecommunications Corporation, GTE Midwest Incorporated; GTE North Incorporated; GTE Northwest Incorporated; GTE South Incorporated; GTE Southwest Incorporated; Contel of Minnesota, Inc.; Contel of the South, Inc.; and GTE Card Services Incorporated d/b/a GTE Long Distance.

<sup>2</sup> Access Charge Reform, CC Docket No. 96-262, FCC 97-158 (rel. May 16, 1997)  
(Continued)

**I. THE FCC CORRECTLY DETERMINED THAT THE TRANSPORT RATE STRUCTURE MUST BE REFORMED TO ENSURE COST-BASED PRICING.**

**A. The Holding in *CompTel v. FCC* And Sections 201(b) And 202(a) Of The Act Compel The FCC To Eliminate The Unitary Rate Structure And Replace It With The Three-Part Rate Structure.**

In its *Access Reform Order*, the FCC directed ILECs to implement a three-part rate structure for tandem-switched transport beginning on July 1, 1998.<sup>3</sup> Under this rate structure, ILECs will be required to charge for tandem-switched transport on the following basis: (1) a per-minute, distance-sensitive charge for transport of traffic over common transport facilities between the end office and the tandem office; (2) a per-minute tandem switching charge; and (3) a flat-rated, distance-sensitive charge for transport of traffic over dedicated facilities between the wire center serving the IXC's POP and the tandem switching office.<sup>4</sup> Several IXCs ask the Commission to retain the current, subsidy-laden unitary pricing structure for tandem-switched transport.<sup>5</sup> Because there are compelling legal and policy justifications for replacing the unitary rate structure, these petitions should be rejected.

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(Continued)

(First Report and Order) ("*Access Reform Order*").

<sup>3</sup> *Id.*, ¶ 175.

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., Competitive Telecommunications Association ("*CompTel*") Petition at 16-23; Frontier Corporation ("*Frontier*") Petition at 2-8; Telecommunications Resellers Association ("*TRA*") Petition at 12-16; Telco Communications Group, Inc. ("*Telco*") Petition at 4-7; WorldCom, Inc. ("*WorldCom*") Petition at 10-17.



First, notwithstanding the allegations of certain petitioners,<sup>6</sup> the implementation of a cost-based rate structure — such as the three-part rate structure described above — is not only consistent with, but is compelled by Sections 201(b) and 202(a) of the Communications Act ("Act"), as interpreted by the D.C. Circuit in *CompTel v. FCC*.<sup>7</sup> The Court held that the "just," "reasonable," and non-discriminatory rates required by Sections 201(b) and 202(a) can differ from cost-based rates only if the Commission "provides a reasoned explanation why a departure ... is necessary and desirable."<sup>8</sup> Because the Commission's new three-part rate structure decision reflects cost-causation principles, the Commission's actions are squarely within its statutory authority. As explained in the *Access Reform Order*,<sup>9</sup> the costs of shared common transport trunks and tandem switching vary with the amount of usage, and, therefore, use of these facilities is properly priced on a per-minute basis. In addition, because LECs must dedicate trunks between the serving wire center and the tandem switch for each IXC, it is appropriate to charge for this dedicated transport on a flat-rated basis.

Some petitioners nonetheless argue that the Commission's three-part model is inconsistent with the manner in which tandem-switched transport costs are incurred on newer fiber optic networks, claiming that transport costs are now distance-insensitive.<sup>10</sup>

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<sup>6</sup> See, e.g., *CompTel* Petition at 11-15; *Frontier* Petition at 3-4; *Telco* Petition at 5-6; *TRA* Petition at 14-16; *WorldCom* Petition at 12.

<sup>7</sup> *Competitive Telecommunications Ass'n v. FCC*, 87 F.3d 522 (D.C. Cir. 1996) ("*CompTel v. FCC*" or "*CompTel*").

<sup>8</sup> *Id.* at 525.

<sup>9</sup> See *Access Reform Order*, ¶ 175.

<sup>10</sup> See, e.g., *Frontier* Petition at 4-5; *Telco* Petition at 5-6; *TRA* Petition at 14-15; *WorldCom* Petition at 12.

These parties have failed to produce more than anecdotal evidence about ILEC network architectures. They cannot seriously challenge that tandem-switched transport costs vary with distance, and that distance-sensitive pricing is thus cost-based. In any event, distance-sensitive pricing is permitted but not mandated under the FCC's rules.<sup>11</sup> If, in fact, tandem-switched transport costs are not distance-sensitive, the market will not support ILECs charging on a distance-sensitive basis. Thus, the market assures that ILECs will select a rate structure that reflects the way underlying costs are incurred.

*Second*, despite the protectionist pleas of some petitioners,<sup>12</sup> the unitary rate structure should not be maintained solely to shield rural and small long distance carriers from the effects of competition. The goal of the FCC is to "promote competition in the interexchange marketplace, not to protect competitors."<sup>13</sup> As noted by the *CompTel* court, "attempt[ing] to recover costs from IXCs that did not cause those costs to be incurred would impart the wrong incentives to both actual and potential providers of local transport, thereby inducing them to offer an inefficient mix of [transport] service."<sup>14</sup> Thus, rural end-user customers should benefit from the implementation of a rate structure that encourages competition for the provision of each component of tandem-

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<sup>11</sup> See *Access Reform Order*, ¶ 190.

<sup>12</sup> See, e.g., *CompTel* Petition at 6-7 (the new pricing rule will increase the rates paid by rural subscribers); *TRA* Petition at 14 (rural and suburban customers will bear the brunt of the adverse financial impact of the FCC's new pricing rules).

<sup>13</sup> *WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, 59 Rad. Reg. 2d 1418, 1434-35 (1986).

<sup>14</sup> *CompTel*, 87 F.3d at 530-31.

switched access.<sup>15</sup> Such competition will lower the cost of each component, and ultimately the cost of the entire service.

*Third*, contrary to the position taken by a number of IXCs,<sup>16</sup> the Commission was correct in mandating that ILECs base their common transport rates "on the relative numbers of DS1 and DS3 circuits in use in the tandem-to-end office link, and ... actual voice-grade circuit loadings ... that the incumbent LEC experiences based on the prior year's annual use."<sup>17</sup> As noted by the Commission, the 9,000 minutes of use figure is based on data that are almost 15 years old,<sup>18</sup> and does not reflect the actual minutes of use experienced by incumbent LECs. Thus, the three-part rate structure aligns transport pricing with the manner in which transport costs are incurred, and will end the market distortions that have resulted from the unitary rate structure.

*Fourth*, the petitioners are incorrect in asserting that the three-part structure creates undue incentives for customers to take direct-trunked transport.<sup>19</sup> To the contrary, the three-part structure creates incentives for IXCs to order, and ILECs to provide, the type of transport services that best meet the IXCs' needs. ILECs have no economic incentive to force their customers to purchase direct-trunked transport, as

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<sup>15</sup> See *Access Reform Order*, ¶ 179 ("in order to permit the fullest development of competitive alternatives to incumbent LEC networks, we need to unbundle reasonably segregable components of incumbent LEC transport services and price them in the manner in which costs are incurred").

<sup>16</sup> See, e.g., CompTel Petition at 23-24; Sprint Corp. ("Sprint") Petition at 8-9; WorldCom Petition at 8-10.

<sup>17</sup> *Access Reform Order*, ¶ 208.

<sup>18</sup> The 9,000 minutes figure was based on data that were submitted in the original *MTS and WATS Market Structure* proceeding. *Access Reform Order*, ¶ 207.

<sup>19</sup> See, e.g., CompTel Petition at 20-23; U.S. Long Distance, Inc. ("USLD") Petition  
(Continued)

such a strategy would leave them vulnerable to being abandoned by their IXC customers. Nonetheless, to ameliorate any possible concerns that the new transport rate structure creates incentives for ILECs to price transport uneconomically, the Commission should grant ILECs the flexibility to utilize any structure they believe the competitive market demands. Such flexibility will ensure that transport is priced reasonably and in a fashion that will promote the efficient use of facilities.

Finally, the use of TSLRIC-based pricing for switched transport, as suggested by certain petitioners,<sup>20</sup> was correctly rejected by the Commission.<sup>21</sup> Given the competitive nature of the transport market, a prescriptive approach is unnecessary. Indeed, market-based pricing — that is, freedom from unnecessary government oversight of ratemaking — would assure a more efficient allocation of resources, as ILECs will be induced to offer new and innovative transport prices in response to IXC demand and competition from new entrants. Rather than adopting the regressive approach of prescribing TSLRIC-based transport pricing, the Commission should further relax pricing constraints in order to promote efficient competition.

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at 3-5.

<sup>20</sup> See, e.g., Excel Telecommunications, Inc. ("Excel") Petition at 3; TRA Petition at 15-16.

<sup>21</sup> See *Access Reform Order*, ¶ 46.

**B. The FCC Should Reaffirm Its Reallocation Of Tandem-Switch Related Costs From The TIC To The Tandem-Switching Rate Elements.**

The *Access Reform Order* directed ILECs to reassign certain costs currently recovered in the Transport Interconnection Charge ("TIC") to other rate elements.<sup>22</sup> Specifically, on January 1, 1998, all ILECs must take the first of three annual steps to reallocate the tandem-switching revenues currently being recovered by the TIC to the tandem-switching rate elements.<sup>23</sup> A few parties have asked the FCC to refrain from reallocating these misassigned costs.<sup>24</sup> This request must be denied for several reasons.

As an initial matter, the D.C. Circuit's holding in *CompTel* compels the Commission to implement a cost-based rate structure. Indeed, "[t]he Commission has recognized in prior rulemakings that, to the extent possible, costs of interstate access should be recovered in the same way that they are incurred, consistent with the principles of cost-causation."<sup>25</sup> As the Commission has acknowledged, the record overwhelmingly establishes that "some costs in the Transport Interconnection Charge (TIC) should be reallocated to other access elements."<sup>26</sup> Thus, the existing TIC

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<sup>22</sup> *Access Reform Order*, ¶¶ 41, 97, 98.

<sup>23</sup> *Id.*, ¶ 218.

<sup>24</sup> See, e.g., *CompTel* Petition at 8-9; *Frontier* Petition at 8-13; *USLD* Petition at 3-5.

<sup>25</sup> *Access Reform Order*, ¶ 24.

<sup>26</sup> *Id.*, ¶ 214. Throughout this proceeding, GTE and an overwhelming majority of parties have clearly demonstrated that the TIC is a hodgepodge of misassigned costs that should be reallocated to more appropriate rate elements. See Comments of GTE, CC Docket No. 96-262, at 35-39 (filed Jan. 29, 1997) ("GTE Access Reform

(Continued)

contradicts principles of cost causation and is a prime example of the distorted pricing that the Commission is seeking to eliminate.

Arguments that reallocating a portion of the TIC to tandem switching will lead to excessive tandem-switching charges are without merit.<sup>27</sup> Higher tandem-switching rates are the natural by-product of moving to a cost-based rate structure from a rate structure that artificially and arbitrarily depressed those rates.<sup>28</sup> As the Commission has concluded, the reallocation of some TIC costs to tandem-switching, where they truly belong, is necessary "to comply with principles of cost causation and the D.C. Circuit's recent decision in *CompTel v. FCC*."<sup>29</sup> Moreover, the reallocation will "facilitate the development of economically-efficient competition for tandem-switching services."<sup>30</sup> Once again, the best way to ameliorate concerns that the new access charge rules will adversely affect smaller IXCs is to allow ILECs sufficient flexibility to design products and services that meet the needs of those carriers — not to cling to an outdated and inefficient transitional charge.

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Comments"); Reply Comments of GTE, CC Docket No. 96-262, at 23-25 (filed Feb. 14, 1997) ("GTE Access Reform Reply Comments").

<sup>27</sup> See *CompTel* Petition at 8 ("the new rule will cause an increase in the tandem switching charge of approximately 400%"); see also USLD Petition at 4.

<sup>28</sup> When the FCC first established the transport rate structure, it only allocated 20 percent of the tandem-switching revenue requirement to the tandem-switching rate element. The remaining 80 percent was allocated to the TIC as an artificial interim mechanism. The time has come, and indeed *CompTel* mandates, that the FCC end this pricing anomaly. In addition, as costs are reallocated out of the TIC and tandem-switching rates increase, the TIC will decrease, assuring no increase in industry-wide costs.

<sup>29</sup> *Access Reform Order*, ¶ 41.

<sup>30</sup> *Id.*, ¶ 218.

In addition, a general objective of reforming the access charge system is the fair allocation of costs among rate elements. The best way to ensure that rates are as efficient as possible is by following cost-causation principles and allowing market forces to drive rates to cost — not by government micro-management. As the Commission acknowledges, “competition or, in the event that competition fails to develop, rates that approximate the prices that a competitive market would produce, best serve the public interest.”<sup>31</sup> The reallocation of costs from the TIC to tandem switching will promote rational pricing and therefore enhance opportunities for economically supportable competition.

Finally, the argument against reallocating costs from the TIC to tandem switching because “the tandem revenue requirement represents the potentially unrecovered transport basket revenues as a whole”<sup>32</sup> is unavailing. Even if some costs in the TIC are misassigned to the interstate jurisdiction, the FCC has no unilateral authority to reassign costs between the intra- and interstate jurisdictions. Rather, such reassignment requires action by a Federal-State Joint Board. Pending such action, the FCC must permit GTE to recover interstate-assigned costs in its interstate rates.

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<sup>31</sup> *Id.*, ¶ 42.

<sup>32</sup> Frontier Petition at 10.

**C. The FCC Should Allow ILECs Flexibility In Establishing Multiplexer Rate Elements.**

In its *Access Reform Order*, the Commission concluded that multiplexer charges should be assessed only on tandem-switched transport.<sup>33</sup> WorldCom asks the FCC to direct ILECs to recover multiplexing costs from users of both dedicated interoffice transport and tandem-switched transport.<sup>34</sup> GTE urges the Commission to grant ILECs the flexibility to establish multiplexer rate elements in line with market pressures and business plans. If an ILEC decides to establish a multiplexer rate element, the marketplace will force it to apply that charge in a rational and consistent manner.

**D. The Commission Should Deny The Request to Waive Non-Recurring Charges Associated With Establishing POPs At Or Near Tandems.**

The *Access Reform Order* required ILECs to waive certain non-recurring charges for network adjustments (e.g., when a transport customer converts trunks from tandem-switched to direct-trunked transport) until six months after the three-part rate structure becomes effective.<sup>35</sup> Telco Communications Group, Inc. ("Telco") seeks to expand this already questionable requirement by requesting that the Commission waive non-recurring charges for establishing POPs at or near tandems.<sup>36</sup>

GTE opposes this request. ILECs incur legitimate costs when they install IXC service at a particular switch location, and they are entitled to recover these costs. The

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<sup>33</sup> *Access Reform Order*, ¶¶ 170-173.

<sup>34</sup> WorldCom Petition at 18.

<sup>35</sup> *Access Reform Order*, ¶ 176.

<sup>36</sup> Telco Petition at 9-10.



waivers sought by Telco would unreasonably compel ILECs to fund the IXCs' network optimization efforts. In addition, IXCs have known for some time that the unitary pricing structure was only an interim mechanism that would be replaced by a more cost-causative approach. Thus, these carriers were well aware that they might need to relocate their POPs in order to minimize transport costs. ILECs should not now be penalized with additional costs because IXCs decided to delay such relocation until the transitional unitary rate structure was eliminated.

**E. Granting Access Customers A Fresh Look To Select Competitive Transport Offerings Is Unlawful And Unnecessary To Protect Competition.**

Teleport Communications Group ("TCG") suggests that access customers be afforded a "fresh look" so that they may terminate existing term or volume commitments with ILECs.<sup>37</sup> This request is both unlawful and unwarranted. First, a "fresh look" would deprive ILECs of the opportunity to recover their reasonable costs and would allow customers to terminate contracts without liability even though the rates, terms, and conditions therein cannot be considered unjust or unreasonable.<sup>38</sup> Second, the Commission already provided a "fresh look" period when interstate access competition

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<sup>37</sup> Teleport Communications Group ("TCG") Petition at 4-6.

<sup>38</sup> See *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (Commission can prescribe a change in contract rates when it finds them to be unlawful); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (Commission can modify the terms of a private contract only when necessary to serve the public interest). See also *Western Union Telephone Co. v. FCC*, 815 F.2d 1495 (D.C. Cir. 1987) (applying the "Sierra Mobile" doctrine to the FCC); *ACC Long Distance Corp. v. Yankee Microwave, Inc.*, 10 FCC Rcd 654 (1995) (establishing that the *Sierra Mobile* doctrine applies to regulatory agencies).

was introduced.<sup>39</sup> A second bite at the apple is simply not warranted. IXCs are large, sophisticated customers with substantial bargaining power. They were aware when entering into volume and term commitments that competitive alternatives were available, and that the FCC's transport pricing rules would be changed after an interim period. Consequently, there is no justification for allowing IXCs an opportunity to evade legally binding contracts.

**F. The Commission Should Eliminate The Exemption Precluding ILECs From Assessing Any Per-Minute Residual TIC Charges On CAPs.**

The Commission's new rules prohibit ILECs from assessing any per-minute residual TIC charge on competitive access providers ("CAPs") that interconnect with the ILEC switched network at the end office.<sup>40</sup> AT&T suggests that CAPs should be immediately exempted from paying this TIC charge.<sup>41</sup>

GTE opposes this suggestion. In maintaining the residual TIC, the FCC made a policy decision to continue subsidizing small carriers during the TIC transition period. In so doing, the FCC directed ILECs to recover the subsidy at the end office. The per-minute residual TIC thus is a subsidy that should apply regardless of whether the interconnecting carrier utilizes ILEC-provided transport. Exempting CAPs from paying the TIC when they interconnect at an ILEC's end office potentially undermines a

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<sup>39</sup> See *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd 7374, 7437-438 (1993) (Second Report and Order and Third Notice of Proposed Rulemaking).

<sup>40</sup> *Access Reform Order*, ¶ 192.

<sup>41</sup> AT&T Petition at 10-11.

substantial portion of that subsidy. Thus, until the residual TIC is eliminated, all carriers interconnecting with the ILEC end office should continue to pay this TIC charge.

Exempting certain carriers from doing so is inconsistent with competitive neutrality and would either prevent ILECs from recovering legitimate costs or compel rate increases for transport customers (if allowed under the price cap rules). Accordingly, contrary to the assertions of AT&T, the CAP exemption should be removed, not expedited.

**II. SECTION 254(e) OF THE COMMUNICATIONS ACT REQUIRES THAT THE FCC MODIFY ITS RULES ON THE TREATMENT OF UNIVERSAL SERVICE CONTRIBUTIONS AND RECEIPTS IN THE COMPUTATION OF ACCESS CHARGES.**

**A. The FCC Should Reinstate 47 C.F.R. § 36.601(c).**

The FCC has stated that ILECs must use any payments received from the new universal service mechanisms to reduce or satisfy the interstate revenue requirement currently collected through interstate access charges.<sup>42</sup> Several ILECs ask the FCC to reconsider this decision, warning that it violates Congress's mandate that universal service support be "sufficient."<sup>43</sup> GTE supports these petitions for reconsideration.

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<sup>42</sup> *Access Reform Order*, ¶ 381. Non-rural carriers will continue to receive universal service support in an equivalent amount to what they received in the past, and therefore will not be required to make any adjustment until January 1, 1999, when the new mechanism takes effect. *Id.*, ¶ 382. The support mechanisms for rural carriers will be adjusted slightly: these carriers can continue to apply universal service receipts to the same accounts as they currently do, but only until a forward-looking cost methodology is effective for them. *Id.*, ¶¶ 383-386.

<sup>43</sup> See, e.g., Puerto Rico Telephone Company Petition at 3-5 (citing 47 U.S.C. § 254(e)).

Insufficient support is inevitable because the Commission has ordered ILECs to use USF receipts only to satisfy the interstate revenue requirement,<sup>44</sup> while simultaneously eliminating 47 C.F.R. § 36.601(c) (the universal service expense adjustment) in the Universal Service proceeding.<sup>45</sup> As fully explained in GTE's Opposition to reconsideration petitions of the *Universal Service Order*, USTA's recommendation that the FCC extend the period during which LECs could recover intrastate loop costs through the USF<sup>46</sup> does not go far enough. To ensure that high-cost areas continue to receive federal USF support consistent with Section 254(e), the FCC should reinstate 47 C.F.R. § 36.601(c).<sup>47</sup>

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<sup>44</sup> GTE disagrees with this aspect of the *Access Reform Order* because forbidding universal service receipts to be used to reduce local rates is inconsistent with the Commission's own stated intention that universal service support payments be used only to defray the cost of providing supported services. *Access Reform Order*, ¶ 381. By its clear terms, the FCC's rule requires that USF receipts be used to reduce revenue requirements for interstate access charges, which are not supported services. This inconsistency renders the rule arbitrary and provides further reason to grant reconsideration.

<sup>45</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at Appendix I at 3 (rel. May 8, 1997) (Report and Order) ("*Universal Service Order*"). (amending 47 C.F.R. § 36.601(c) such that "[b]eginning January 1, 1999, non-rural carriers shall no longer receive support" for intrastate loop-related costs through the USF).

<sup>46</sup> USTA Petition at 9-10.

<sup>47</sup> See Comments of GTE on Petitions for Reconsideration, CC Docket 96-45, at 2-3 (explaining why 47 C.F.R. § 36.601(c) must be reinstated and how its elimination violated the APA's requirement to give proper notice, 5 U.S.C. § 553, and the Communications Act's requirement that any changes to the jurisdictional cost separation rules be referred to a Joint Board, 47 U.S.C. § 410).

**B. To Prevent Underrecovery Of Costs, The FCC Should Not Apply the X-Factor To Universal Service Contributions.**

USTA asks the FCC not to apply the productivity offset (the "X-factor") to universal service contribution amounts so that LECs have the opportunity to recover their contributions.<sup>48</sup> GTE supports USTA's request for three reasons. First, application of the X-factor would be irrational. The primary purpose of the X-factor — to encourage ILECs to become more efficient — is not relevant to universal service contributions; the contribution amounts are fixed by law, and an ILEC cannot limit them by increasing efficiency. Second, application of the X-factor would be inconsistent with the Commission's intention that ILECs recover their USF contributions from their end users. The decrease in the price cap due to the X-factor will offset the exogenous increases to the price cap index necessitated by the ILECs' USF contributions,<sup>49</sup> and therefore is directly contrary to the FCC's stated intentions.<sup>50</sup> Finally, application of the X-factor would be unfair and unlawfully confiscatory. Each year, such application would further decrease the amount that price cap LECs can recover, thereby preventing ILECs from ever recovering their full contributions from end users. As a result, application of the X-factor would violate the "sufficiency" requirement of Section 254(e).<sup>51</sup>

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<sup>48</sup> USTA Petition at 5-6.

<sup>49</sup> *Id.* at 5.

<sup>50</sup> See *Access Reform Order*, ¶¶ 378-380 (explaining how price cap LECs are to recover their USF contributions).

<sup>51</sup> Technically, the FCC should solve this problem by applying the X-factor but increasing the PCI for each basket by an amount sufficient to eliminate any decrease resulting from the X-factor. See Reply Comments of USTA, CC Docket No. 96-262, at 41-46 (filed Feb. 14, 1997) (demonstrating how this formula would work).

**C. The FCC Should Reject AT&T's Proposal That USF Contributions Not Be Recovered Through Common Line Recovery Mechanisms.**

AT&T argues that the Commission should not permit ILECs to recover universal service contributions through common line cost recovery mechanisms.<sup>52</sup> Instead, it proposes that the Commission adopt a mandatory end-user surcharge for recovery of universal service contributions.<sup>53</sup>

GTE agrees that a mandatory end-user surcharge would be competitively neutral and consistent with the statutory requirement that universal service support mechanisms be explicit.<sup>54</sup> However, the Commission has decided not to adopt a mandatory surcharge; rather, it allows allow price cap LECs to recover the universal service contributions through the ordinary workings of the price cap rules for the common line basket. Absent a mandatory end-user surcharge, failure to permit recovery through common line charges would produce a shortfall because the subscriber line charges are capped.<sup>55</sup> AT&T's concern that IXCs will bear a portion of these costs through CCL rates will be ameliorated over time as SLC caps are allowed to rise. In the interim, failure to allow full cost recovery would be unlawfully confiscatory.

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<sup>52</sup> AT&T Petition at 3-5.

<sup>53</sup> *Id.* at 2.

<sup>54</sup> See Reply Comments of GTE, CC Docket No. 96-45, at 49-55 (filed Jan. 10, 1997) ("GTE Universal Service Reply Comments").

<sup>55</sup> *Id.* at 21-22.

**III. ELIMINATION OF THE PICC OR CLARIFICATION OF ITS APPLICATION TO CENTREX LINES IS NECESSARY, AND THE FCC SHOULD REJECT ARGUMENTS THAT THE MULTI-LINE PICC SHOULD BE REDUCED TO THE PRIMARY RESIDENTIAL PICC LEVEL**

**A. To Maximize Efficient Provision And Affordability Of Universal Service, The FCC Should Eliminate The PICC And Increase Either The SLC Or Universal Service Support.**

The FCC has recognized that maintaining a cap on SLCs for primary residences and single-line businesses while eliminating the CCL would prevent price cap LECs from recovering their common line costs.<sup>56</sup> It therefore created a presubscribed interexchange carrier charge ("PICC") — a flat, per-line charge that LECs will assess on the end user's presubscribed interexchange carrier.<sup>57</sup> CompTel urges the FCC to eliminate the PICC, stating that it is inefficient and will harm low-volume multi-line business customers.<sup>58</sup> GTE supports this petition and suggests two alternative methods of ensuring that LECs recover their common line costs.

The most economically rational method for recovering common line costs is through the SLC.<sup>59</sup> The FCC should eliminate the PICC and remove the cap on SLCs so that LECs are able to recover all their common line costs from end users.<sup>60</sup>

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<sup>56</sup> *Access Reform Order*, ¶ 88.

<sup>57</sup> *Id.*, ¶ 91.

<sup>58</sup> CompTel Petition at 3-7.

<sup>59</sup> This is the consensus in all sectors of the telecommunications industry. See GTE Access Reform Reply Comments at 20 (citing concurring comments by ILECs, IXCs, cable operators, and State PUCs).

<sup>60</sup> The Commission has acknowledged that full recovery of common line costs from end users is preferable in the long run. See *Access Reform Order*, ¶ 71 (stating that the eventual goal is for LECs to recover all costs from end users).

However, if the Commission determines that completely uncapping the SLC would make local phone service unaffordable, the Commission should permit price cap LECs to recover any residual costs from the USF. This mechanism would be competitively neutral because all telecommunications carriers contribute to the fund, and the common line costs would be distributed among carriers in proportion to their end-user revenues (the basis of their USF contribution).

Maintaining the multi-level PICC would cause market distortion and insufficient funding for universal service. The customers who would be charged the highest PICC are those multi-line business customers most able to avoid the charge by changing to alternate providers who are not required to assess a PICC. Thus, the mandatory PICC charge distorts the choice of a local service provider, violates the requirement to fund universal service in a competitively neutral manner, and can lead to an unlawful "Taking" because it does not allow ILECs a reasonable opportunity to recover their costs.

Further, as will be discussed in Section IV, the key to ensuring competitive neutrality is the application of access charges, including the PICC, if it is maintained, to UNEs.<sup>61</sup> The Commission's decision not to allow access charges to be applied to UNEs creates a powerful incentive for entrants to use UNEs in order to avoid paying the

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<sup>61</sup> Of course, the application of access charges to UNEs should always follow the economically efficient principles of applying non-usage sensitive access charges to non-usage sensitive UNEs, and applying usage sensitive access charges to usage sensitive UNEs. Thus, it would not be rational to apply per-minute access charges to unbundled loop elements, but it would be appropriate to apply the PICC to an unbundled loop.



universal service subsidy the Commission admits is still present in interstate access charges.<sup>62</sup>

**B. If PICCs Are Retained, They Should Be Applied To Centrex Lines On A Trunk-Equivalency Basis.**

The Commission has stated that the PICC will be applied on a per-line basis. As a result, this charge disproportionately burdens Centrex lines compared to similarly-sized PBX arrangements. The following example vividly illustrates the need to apply PICCs based on a lines-to-trunk equivalency factor to avoid disadvantaging users of Centrex systems:

Business A uses its own PBX system employing 2,000 stations, with 100 PBX trunks. These trunks allow the customer to make calls outside the PBX.

Business B uses a Centrex system with 2,000 lines. Business B makes outside calls using Centrex capability that is functionally equivalent to PBX trunks, i.e., 100 outside line paths.

Business A will pay PICC charges of \$275 per month on 100 outside line paths at \$2.75 per line. At the same time, Business B will pay \$5,500 per month (2,000 lines times \$2.75 per line) for PICCs.

Technology-favoring regulations are antithetical to the Communication Act's goal of a competitive telecommunications market<sup>63</sup> and the FCC's stated intention that its regulations be "competitively neutral."<sup>64</sup> USTA therefore requests that, if the PICC is

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<sup>62</sup> Access Reform Order at ¶ 9.

<sup>63</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, codified at 47 U.S.C. §§ 151 *et. seq.*

<sup>64</sup> See *Universal Service Order*, ¶¶ 21, 47.